

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight & Programs Branch**

**Resolution T-17500
May 12, 2016**

RESOLUTION

Resolution T-17500. This Resolution denies Verizon California Inc.'s (now Frontier California Inc., U-1002-C) request for a permanent deviation, but grants a limited five-year deviation, from the requirements of Public Utilities Code § 320 regarding the aerial placement of new fiber and copper facilities that were completed without Commission approval on existing electric utility poles along scenic U.S. Highway 395 in Mono County. This Resolution also orders Verizon California Inc. to place the aerial facilities which cross U.S. Highway 395 at three locations underground, within eighteen months of this Resolution's adoption.

By Advice Letters 12712, 12712A and 12712B, filed on July 1, July 21, and July 28 2015, respectively.

Summary

Verizon California Inc.'s (Verizon) request for a permanent deviation from the requirements of Public Utilities (P.U.) Code Section (§) 320¹ and Commission Decision (D.) 80864 is denied. Verizon is granted a limited five-year deviation, subject to certain conditions. Within eighteen months from the approval of this Resolution, Verizon's successor company Frontier California Inc., (Frontier)² should place aerial copper and fiber facilities which cross state-designated scenic highway U.S. Highway 395 (highway 395) underground, at three locations. Additionally, Verizon's successor Frontier should contact Southern California Edison (SCE) to initiate discussions to address the feasibility of a joint plan to place underground all of the aerial facilities that run along the stretch of highway 395 in Mono County between mile markers 76.8 and 104.8, designated as scenic highway, and to remove all solely and jointly-owned utility poles. Additionally, a

¹ Hereafter, all statutory references are to the Public Utilities Code, unless otherwise indicated.

² On December 3, 2015, the Commission in D.15-12-005 (A.15-03-005) approved the joint application of Frontier California Communications Corporation (Frontier) and Verizon California Inc. (Verizon) for the sale and transfer of Verizon's California assets to Frontier. Frontier will assume Verizon's utility identification (U-1002-C). The acquisition closed effective April 1, 2016.

feasibility report addressing this issue should be provided to the Communications Division (CD) Director within two years of this Resolution's adoption.

Background

A number of highways in California are designated as state scenic highways. To enhance the environment and visual quality along and near these highways, California's lawmakers enacted legislation forty-five years ago to protect these interests.

Legislative History

Section 320 was enacted in 1971, Chapter 1697, and reads, in relevant part, as follows:

The legislature hereby declares that it is the policy of this state to achieve, whenever feasible and not inconsistent with sound environmental planning, the undergrounding of all future electric and communication distribution facilities which are proposed to be erected in proximity to any highway designated a state scenic highway pursuant to Article 2.5 (commencing with § 260) of Chapter 2 of Division 1 of the Streets and Highways Code and which would be visible from such scenic highways if erected above ground. The Commission shall prepare and adopt by December 31, 1972, a statewide plan and schedule for the undergrounding of all such utility distribution facilities in accordance with the aforesaid policy and the rules of the Commission relating to the undergrounding of facilities. The Commission shall require compliance with the plan upon its adoption.

The Commission is responsible for the administration of Section 320. After hearings conducted in Case 9364, the Commission implemented Section 320 in Decision (D.)80864 on December 19, 1972, which states:

In order to facilitate administration, letter requests for deviations will be accepted, reviewed by the Commission staff and, where appropriate, approved by Commission resolution.

D.80864 states that no communications or electric utility shall install overhead distribution facilities “in proximity to” and “visible from” any prescribed corridor on a designated scenic highway in California unless a showing is made before the Commission and the Commission finds that undergrounding would not be feasible or would be inconsistent with sound environmental planning. The Decision defines “in proximity to” as being within 1,000 feet from each edge of the right-of-way (ROW) of designated state scenic highways. D. 80864 requires that all communications or electric utilities facilities within 1,000 feet of a scenic highway be undergrounded.³

D. 80864 further states that when repairs or replacement of existing overhead facilities in the same location do not significantly alter the visual impact of the scenic highway, they should not be considered as new construction and need not be converted to underground. Therefore, based on D.80864, deviations from Section 320 may be permitted when undergrounding would not be economically feasible and would not significantly alter the visual impact of the scenic highway.

This Resolution concludes a review of Verizon’s Advice Letter (AL) 12712 and supplemental ALs 12712A and 12712B, filed during July 2015, in compliance with Resolution T-17397. The AL and supplemental ALs requested a permanent deviation from Section 320.

Events Leading up to Commission Resolution T-17397

In March 2008, CD received a letter from Mono County resident Mr. Stephen Kalish, reporting a possible Section 320 violation along highway 395, designated a scenic highway in the year 2000. In turn, CD staff asked Verizon if it was aware of any overhead facilities placements, within its own service areas, along highways having received scenic designation.

Verizon responded by filing Tier 3 ALs 12415 and 12415A on June 18, 2009 and September 18, 2009, respectively. In the ALs, Verizon notified the Commission that, in 2004, it had placed overhead fiber facilities along highway 395 without first obtaining approval from the CPUC henceforth, requested a retroactive deviation from Section 320 for having placed these facilities without CPUC approval.

To address ALs 12415 and 12415A, the Commission adopted Resolution T-17397 on August 15, 2013, which conditionally approved, for a limited term of two years, Verizon’s request for a retroactive deviation from Section 320. The limited term deviation

³ California Public Utilities Commission Decision (D.) 80864, December 16, 1972.

addressed the placement of overhead fiber facilities that were completed without Commission approval in 2004, on existing utility poles along highway 395 in Mono County from mile marker 76.8 to mile marker 104.8, subject to mitigation measures and payment of a \$5,000 fine.⁴

In compliance with Ordering Paragraph (O.P.) 2 in Resolution T-17397, Verizon filed AL 12712 on July 1, 2015 requesting a “permanent” deviation. Staff found Verizon’s service list to be insufficient, since it omitted parties of interest to the deviation request. On July 21, 2015, and July 28, 2015, Verizon filed supplemental ALs 12712A and 12712B, respectively. The supplemental ALs further expanded the service list to include additional interested persons/agencies.

Discussion

Scenic Highway Area Description

Portions of highway 395, including a segment from the junction of State Route 108 to north of Bridgeport, CA (mile markers 76.8 to 104.8), received scenic highway designation on June 5, 2000. Scenic highway 395 winds its way along the eastern slope of the Sierra Nevada Mountains, near the Nevada state line. The elevation is approximately 7,000 feet, and the terrain is typical of a high desert plateau. It is an open, pristine expanse of grazing ranges and meadows with the Sierra Nevada range in plain sight to the west. There are a few structures visible from scenic U.S. Highway 395 consisting of homes, ranches and barns.

Existing Facilities along Scenic Highway 395

Verizon’s overhead distribution facilities as referenced in AL 12712 were placed on joint poles, attached to overhead distribution electric facilities on an existing power line lead and along an existing copper cable lead adjacent to other cables within the scenic highway right of way. SCE initially constructed its overhead electric distribution facilities along highway 395⁵ in 1962, while copper aerial telephone facilities were placed in 1963. The facilities placed across highway 395 at mile marker 79.0 are copper and

⁴ Resolution T-17397, Ordering Paragraph 2: Verizon California Incorporated is granted this temporary Section 320 deviation request for a period of two years. By July 1, 2015, Verizon shall either 1) have started underground placement of these aerial facilities by any available alternative, or 2) have submitted a subsequent tier 3 advice letter no later than that date to justify the need to extend the Section 320 deviation. If undergrounding construction is not started prior to July 1, 2005, Verizon shall submit a Tier 3 advice letter to the Commission’s Communications Division Director, attesting to that fact.

were also placed in 1963. The crossings at mile markers 80.6, 85.7 and 93.7—all within the stretch designated as scenic highway in June 2000—consist of fiber, and were placed by Verizon in 2004, after the year 2000 scenic highway designation.

Visual Impact

The Commission disputes Verizon’s contention that “the addition of the fiber cables to existing facilities would not create additional visual adverse effects to the highway.” On November 9, 2009, CD Staff conducted a site visit and observed that the joint electric and telephone overhead distribution facilities were clearly visible from highway 395 and that the fiber placed on the overhead distribution facilities is black in color, unlike electric or copper wire, and its thickness makes it more prominent. Splices and terminals, also black in color, are strung from the fiber and create an additional visual impact. The overhead Verizon facilities have a noticeably cumulative visual impact on the open landscape along the scenic highway corridor.

Communications Division’s Data Request to Verizon

On September 18, 2015, CD staff sent this data request to Verizon: “After December 31, 1972, has Verizon, or any predecessor company, placed overhead fiber, or copper, cables across highway 395, at any location in which the highway is designated a scenic highway? If yes, explain the locations, dates, type of facilities, etc.” On October 6, 2015, Verizon responded with the data itemized in Table 1:

TABLE 1

Location	Year Placed	Type
US 395 1,000’ N/O McGee Creek Rd	1999	copper cable
US 395 720’ N/O HWY 203	2011	fiber cable
US 395 @ Pole Line Rd	2004	copper cable
US 395 132’S/O 4 th St	1994	copper cable
US 395 @Main St	1990	copper cable
US 395 @CA 108	1981/2004	copper/fiber
#93876 US 395 (address)	1988	copper cable
#84820 US 395 (address)	1981/2004	copper/fiber
#80578 US 395 (address)	1981/2012 (later changed to 2004)	copper/fiber
# 80590 US 395 (address)	1988	copper cable
#78957 US 395 (address)	1993	copper cable

Table 1 reports 11 locations where overhead placements took place after December 31, 1972, three of which Verizon identified as having multiple cable placement dates in the “Year Placed” column. Verizon further clarified that each of these three crossings has two cables, with the copper cable being placed in the earlier year (1981) and the fiber cable being placed in the latter year (2004 twice, and 2012). Therefore, Table 1 shows that Verizon placed five separate cables across highway 395 after its scenic highway designation in the year 2000, three of which exist within the stretch of highway designated as “scenic”, without requesting a Section 320 deviation prior to placement.

The subsequent 2009 submission of AL 12415, which requested a Section 320 deviation along highway 395 between mile markers 76.8 and 104.8, did not specifically itemize the three highway crossings which include five cables, being discussed in this Resolution.

Frontier’s Acquisition of Verizon

In D.15-12-005, the Commission approved the joint application (A.15-03-005) of Frontier and Verizon for Frontier to acquire Verizon's wireline, broadband and video operations, and FiOS networks in California, and the transaction closed effective April 1, 2016. Frontier previously received federal approvals of the acquisition from the Federal Communications Commission and the Department of Justice. Since Frontier is the successor of Verizon, it will be subject to this Resolution’s orders. As such, the January 14, 2016 teleconference call, discussed in the next section included a representative from Frontier.

CD Conference Call with Verizon and Frontier

On January 14, 2016, CD staff held a conference call with Verizon and Frontier to address Verizon’s deviation request and its October 6, 2015 data request response, and related underground placement issues. Verizon clarified that only three of the five cable crossings constructed after the year 2000 and previously identified in Table 1 were located within the stretch of highway 395 designated as a scenic highway. CD then sent another data request on January 19, asking Verizon to update the data shown in Table 1 by listing the locations where cables cross over highway 395 (matching mile marker locations with corresponding GPS coordinates), and to provide a construction timetable and associated cost for underground placement. Verizon’s February 1, 2016 update response to the data request including underground placement estimate, reveals three locations within the length designated as scenic highway, between MMs 76.8 and 104.8, where cable placement took place after June 2000, as shown in Table 2.

Table 2

Location	Year Placed	Type	GPS Coordinates	US 395 Mile Marker	Placed after Scenic Designation (Y/N)	To Be Undergrounded in 2016 (Y/N)	Cost to Underground Crossing
US 395 1,000' N/O McGee Creek Rd	1999	copper cable	N/A	N/A	N/A	N/A	N/A
US 395 720' N/O HWY 203	2011	fiber cable	N/A	N/A	N/A	N/A	N/A
US 395 @ Pole Line Rd	2004	copper cable	N/A	N/A	N/A	N/A	N/A
US 395 132'S/O 4 th St	1994	copper cable	N/A	N/A	N/A	N/A	N/A
US 395 @Main St	1990/1969	copper cable	N/A	N/A	N/A	N/A	N/A
US 395 @CA 108	1981/ 2004	copper/fiber	38.348572°, -119.452211°	93.7	Y	N	\$75,188.00
#93876 US 395 (address)	1988	copper cable	38.351651°, -119.399602°	N/A	N	N	\$36,288.70
#84820 US 395 (address)	1981/ 2004	copper/fiber	38.342047°, -119.323043°	85.7	Y	N	\$51,070.50
#80578 US 395 (address)	1981/ 2004	copper/fiber	38.276644°, -119.289597°	80.6	Y	N	\$18,382.34
# 80590 US 395 (address)	1988	copper cable	38.272669°, -119.285805°	N/A	N	N	\$33,575.45
#78957 US 395 (address)	1993	copper cable	38.257878°, -119.271520°	N/A	N	N	\$20,979.12
						TOTAL COST	\$235,484.11

CD Staff Evaluation of the Deviation Request

To address the construction timetable question, Verizon responded that the pre-construction process for underground cable placement at the three crossing locations could take more than a year due to permitting requirements subject to the Bureau of Land Management, Caltrans, and the Bureau of Indian Affairs (BIA). Verizon also stated "Construction in this area typically takes place in the May to October timeframe because of the mountainous terrain and heavy snowfall. If the permitting process is completed construction could begin in the May to October window."

Verizon further indicated that after planning completion and permitting approval, construction would likely take one to two months, depending on local conditions. Verizon stated, "This area has heavy rock and typically requires a special boring machine. During construction we may also need to have a representative from the BIA on site to identify any artifacts. These items can cause delays in the construction process."

During CD's review of AL 12415, Verizon originally provided a cost estimate of \$41.40 per foot to place wires underground and an estimate of \$3.45 per foot to place wires overhead, a ratio of 12:1. Verizon indicated that the total estimated cost to underground

its wires along the entire 28-mile scenic highway stretch of US 395 would be \$2.7 million. In the February 1, 2016 data request response, Verizon revised its estimate from \$2.7 million to approximately \$5.7 million, more than doubling the cost ratio.

CD staff reiterates that Verizon previously failed to comply with Section 320 and D.80864 because it did not obtain approval from the Commission before constructing the new aerial communications facilities adjacent to or crossing over designated scenic highways, and further notes that Verizon originally identified this violation by filing AL 12415, after this potential violation was reported by a Mono County citizen. CD Staff then asked Verizon to survey all aerial facilities placed along scenic highways in California for possible noncompliance. CD Additionally notes that in the case of this deviation request, opportunities continue to exist to place these aerial facilities underground.

CD staff evaluated information gathered from previous field visits, data requests, and parties' protests and comments. CD finds that in 1981, Verizon constructed aerial copper facilities at three highway crossings adjacent to mile markers 80.6, 85.7 and 93.7. In mid-2000, this stretch of highway 395 was designated a state scenic highway. In 2004, Verizon added aerial fiber cables to these crossings.

CD staff recommends that Frontier be ordered to place underground fiber cables at these three locations, along with the corresponding copper cables, even though the copper cables were placed across the highway prior to the highway's year 2000 scenic designation. Any added expense involved in placing the copper cable underground should be minimal.

To allow for Frontier's and SCE's long-term planning strategies, CD staff also recommends a limited five-year deviation from the requirements of Section 320, during which Frontier should investigate all underground placement options. During the next five years, Frontier should contact SCE to initiate discussions to address the feasibility of a joint plan to place all aerial facilities along this stretch of scenic highway between mile markers 76.8 and 104.8 underground, and should submit a feasibility report addressing this issue to the CD Director, within two years of this Resolution's adoption.

Safety Considerations

The Commission's General Order (G.O.) 95 contains safety directives concerning overhead utility lines. Specifically, G.O. 95, Section 1, Rule 11 states: "The purpose of these rules is to formulate for the State of California, requirements for overhead line design, construction and maintenance, the application of which will ensure adequate service and secure safety to persons engaged in the construction of, maintenance and operation or use of overhead lines and to the public in general."⁶

Notices/Protests

In response to notice of the ALs in the Daily Calendar, the Commission received protests to the ALs from: (1) Mr. Stephen Kalish, and (2) The California Broadband Cooperative (CBC).

CD staff reviewed the process that Verizon undertook to comply with Section 320 requirements including orders set forth in Resolution T-17397, and reviewed the merits of the respective protests from Mr. Kalish and the CBC, and Verizon's corresponding replies.

Mr. Kalish's Protest

On August 14, 2015, Mr. Stephen Kalish filed a protest letter to Verizon's AL 12712B, requesting that the Commission reject Verizon's request for a permanent deviation and instead require Verizon to underground all aerial facilities along highway 395.

In his protest letter, Mr. Kalish states that Commission Resolution T-17397 ordered Verizon to: 1) Transition from aerial to underground placement "by any available alternative", and 2) "if that task is not completed within two years, Verizon must justify the need to extend the Section 320 waiver for an additional period of time." As such, "Verizon did not do as ordered in Resolution T-17397, and does not meet the burden of justifying a permanent deviation extension." Mr. Kalish also asserted that:

- Verizon incorrectly references cost-associated Findings of Fact (FOF) 13 and 14 of Resolution T-17397 as evidence that undergrounding is not economically feasible. But as stated in FOF 17, Resolution T-17397, "The Commission notes that in the case of this

⁶ D.12-01-032, January 12, 2012.

late-filed deviation request, opportunities existed and continue to exist to place the aerial facilities in question underground.”

- The fact that standing SCE poles exist does not override the requirement for undergrounding new aerial cable along a state designated scenic highway.
- In 2004, Verizon illegally installed 65,000 feet of aerial fiber optic cable along and across sections of highway 395 from northwest of Bridgeport to west of the junction of state highway 108 and highway 395 to serve a customer at Pickel Meadow.
- While SCE has not offered Verizon a joint trenching opportunity since the adoption of Resolution T-17397, the California Advanced Services Fund (CASF) provided a supplemental grant of \$1,000,000 to CBC for its Digital 395 project, placing underground fiber facilities to Pickel Meadow to serve the Marine Corps Mountain Warfare Training Center in late 2013 or early 2014.⁷ Verizon has access to this dark (unused) fiber and should use this resource.
- Verizon’s financial figures for leasing available open source fiber are questionable. If leasing twenty miles of fiber from Digital 395 will cost almost \$1 million, Digital 395 will find it difficult to get enough customers to be self-sustaining.
- Verizon’s latest request for a permanent deviation—inconsistent with the order in Resolution T-17397—represents unfair competition, as any promoted price savings were the result of illegal construction activity that Verizon has been asked to remove, and should be denied by the Commission.

Verizon’s Response to Mr. Kalish’s Protest

On August 24, 2015, Verizon responded to Mr. Kalish's protest:

[Verizon]...provided all information requested by (CD) staff...The relief requested is consistent with law and Commission precedent...the protest be dismissed and the relief requested in the ALs be granted.

⁷ The Marine Corps Mountain Warfare Training Center is located on California Highway 108 at Pickel Meadow, 21 miles northwest of Bridgeport. The MCMWTC is sited at 6,762 feet, with elevations in the training areas at almost 12,000 feet.

In response to Mr. Kalish's position that a deviation should not be approved, Verizon counters that Decision (D.) 80864 allows parties to seek deviations from Section 320 when undergrounding would be economically infeasible and granting the deviation would not significantly alter the visual impact of the scenic highway. Verizon states that it meets both of these conditions, and further states:

- Verizon's copper facilities and SCE's facilities would remain overhead even if Verizon undergrounded the fiber cables subject to this deviation request. Verizon is not obligated to underground copper cables that were installed prior to the scenic designation of highway 395.
- Resolution T-17482 granted AT&T a retroactive deviation for 14 locations that "also have electric facilities, so there would not be a significant environmental impact or improvement by requiring AT&T to place said facilities underground."
- Alternative costs to maintaining its aerial facilities, including leasing dark fiber, remain economically infeasible, as in 2013. The estimated cost of undergrounding and leasing dark fiber over a five-year period would exceed \$1 million, including the cost of connecting existing poles to fiber-fed cell sites using an underground path inside the scenic highway corridor.
- Mr. Kalish's protest states that Resolution T-17397 ordered Verizon to "transition from aerial to underground placement...." Verizon counters that the first paragraph of the resolution orders Verizon to explore feasible undergrounding options: "This Resolution does not order undergrounding, but directs Verizon to continue to explore all feasible undergrounding options."
- Resolution T-17397 further explains Verizon's obligations pursuant to the temporary deviation: "We grant a conditional two-year approval of this Section 320 deviation request, during which time Verizon is directed to reevaluate undergrounding costs and opportunities along this scenic highway corridor."
- In reevaluating undergrounding costs, Verizon states that these costs have increased relative to the new cell sites that would require connection, and reiterates that the opportunity for leasing dark fiber is economically infeasible. Pursuant to Verizon's response, Mr. Kalish requested a redacted copy of the confidential attachment A, itemizing the cost estimate filed with AL 12712. Verizon had Mr. Kalish sign a non-disclosure agreement and provided him with a copy of the confidential exhibit.

California Broadband Cooperative's Protest

On August 14, 2015, CBC filed a protest to Verizon's AL 12712B, urging the Commission to reject Verizon's deviation request. CBC does not dispute that Verizon currently has no joint trench opportunity, but it had the opportunity to participate in a joint trench with CBC during the Digital 395 network construction.⁸ In August 2011, CBC gave Verizon notice to see if it was interested in jointly installing facilities along the Caltrans right-of-way (ROW) on highway 395 in Mono, Inyo, Kern and San Bernardino Counties. CBC reports that Verizon summarily rejected its offer without showing further interest.

In referring to its cost analysis provided in the AL's Attachment A, Verizon contended that: "All potential alternatives to aerial facilities continue to be or are uneconomic ... Moreover, based on recent agreements, the cost of leasing dark fiber over a five-year period would approach \$1 million. That recurring cost would add to the estimated minimum cost for building the connecting facilities to utilize the dark fiber, and the removal costs for the aerial fiber" referring to the cost analysis as conservative.

CBC responds that it disagrees with Verizon's position. CBC states that it is unclear what specific costs are identified by Verizon. CBC asserts that its Digital 395 network provides a viable, cost-effective dark fiber solution for Verizon services in the area. CBC claims that Verizon never requested a dark fiber lease quote in the area where the deviation is being requested. CBC continues that while it provided past cost estimates to Verizon for dark fiber leases, those quotes were for facilities between Verizon's Barstow -Bridgeport and Bishop - Benton Central Offices (COs), and quotes for dark fiber segments of that magnitude would be significantly greater than for the shorter scenic highway segment.

CBC believes that Verizon's assertion that it would incur additional costs in building connecting facilities is also overstated. Presently, CBC's Digital 395 fiber optic facilities are extended close to the outside of Verizon COs in the area, and could easily facilitate connectivity. CBC says it made this connectivity during the recent Bridgeport fire by interconnecting to Verizon facilities on an emergency basis through manholes in Bishop and Mammoth Lakes, to restore service to the Verizon Mammoth Lakes CO. That connection has since been taken down but could easily and quickly be restored.

⁸ As a grantee under the Broadband Telecommunications Opportunities Program of the National Telecommunications and Information Administration, with plans to install telecommunications facilities along a Caltrans ROW adjacent to highway 395, CBC was required under the provision of Section 600, et. Seq. of the Caltrans Encroachment Permit Manual to give notice to Verizon to see if it had interest in joining in facilities installation.

CBC states that any cost analysis for a Verizon dark fiber lease should be evaluated on a 20-year rather than five-year indefeasible right of use (IRU)⁹ analysis. The annual cost of a dark fiber lease decreases significantly with longer-term agreements and a five-year cost analysis tends to overstate the total average annual cost.

CBC states that its Digital 395 underground network facilities to Pickel Meadows would provide a compelling transmission alternative that would benefit Verizon and the Marine Corps Mountain Warfare Training Center when compared to the existing vulnerable aerial facilities.

Verizon's Response to California Broadband Cooperative's Protest

On August 24, 2015, Verizon responded to CBC's protest. Verizon took issue with the claim that its request should be denied because it "summarily rejected" a joint trenching opportunity with CBC. Verizon stated that this argument is incorrect and restates a position taken prior to the Commission adopting Resolution T-17397, citing the Commission's conclusion at page 9 that "[s]ince trenching for the CASF broadband project is well underway, the prospect for joint trenching is not a feasible option to recommend at this time and would delay broadband deployment in the area."

Verizon continues that the issue is whether there has been a joint trenching opportunity with SCE during the approved deviation period from July 2013 through July 2015, again citing Resolution T-17397 at page 16, which states that it is "conceivable that another opportunity for Verizon to place these facilities underground may occur, including the possibility that in the future, SCE may replace existing poles in the area."

Verizon also disputes CBC's assertion that its Digital 395 network provides a viable, cost effective solution for Verizon services in the area. This is no longer true, as there are now three additional fiber-fed cell sites feeding service locations that utilize Verizon's aerial fiber. Hence, even if the services located at or near the Marine Corps Mountain Warfare Training Center could be economically transitioned to CBC's Digital 395 network, Verizon's aerial fiber would be needed to serve the other three locations, otherwise Verizon would incur significant additional undergrounding expenses, consistent with previously estimated costs.

⁹ An IRU is a contractual agreement between the operators of a communications cable or a fiber optic network and a client.

Comment Letter from the California Department of Transportation (Caltrans)

CD also received comments from Mr. Gayle Rosander of Caltrans addressing Verizon's AL. Mr. Rosander explained that while granting Verizon's deviation request may not impact the existing scenic viewshed, placing the lines underground would improve the viewshed, while coinciding with the County's fundamental scenic corridor goals. Mr. Rosander stated that granting a deviation must not set precedence for future actions, as cumulative visual impacts could become significant, potentially resulting in the loss of state scenic highway designations.

Commission's Review of Protests, Comments and Responses

Verizon's comment that its copper facilities would remain overhead even if it placed the subject fiber cables underground is incorrect. If the Commission orders Verizon to place its fiber facilities underground, it may order Verizon to place its copper facilities underground as well.

Verizon stated that the Commission granted AT&T a "permanent" deviation for fourteen locations in Resolution T-17482, noting that "these locations also have electric facilities, so there would not be a significant environmental impact or improvement by requiring AT&T to place said facilities underground." Therefore, Verizon maintains that its case is more compelling than AT&T's because not only would SCE's electric facilities remain, but so would Verizon's copper cables. Verizon mischaracterizes Resolution T-17482. AT&T filed for a retroactive deviation and not a permanent deviation for building facilities at 17 locations, and was fined \$5,000 per violation occurrence, for a total of \$85,000.

Comments

Public Utilities Code § 311(g)(1) requires the Commission to serve copies of draft resolutions on all parties, and make the draft resolution available for public review and comment for a period of 30 days or more, prior to a vote by the Commission on the resolution. On April 12, 2016, the Commission served copies of this resolution for comments to all persons on the attached service list.

CD staff received comments on the draft resolution from Frontier on May 2, 2016, supporting the draft resolution, and asserting that the resolution addressed concerns raised by all interested parties.

CD staff also received comments on the draft resolution from Mr. Stephen Kalish on May 2, supporting denial of Verizon's request for permanent deviation, but supporting the resolution as a whole. In doing so, Mr. Kalish suggested that the Commission give Frontier the option of removing all or most of the aerial fiber running parallel with the highway and transition its service to the Digital 395 project, as an alternative solution to the ordered undergrounding of short portions where aerial fiber and cable cross highway 395,

CD has reviewed Mr. Kalish's recommendation to leverage off of Digital 395 infrastructure and has considered the additional expense associated with the recommendation. CD does not recommend that Mr. Kalish's suggestion be adopted.

Conclusion

CD staff recommends approval of a conditional, five-year retroactive deviation from Section 320 to Verizon subject to the documented completion of the following mitigation measures:

- Frontier should place both fiber and copper facilities crossing over scenic highway 395 underground at these three mile marker locations: (1) 80.6; (2) 85.7; and (3) at 93.7, within eighteen months of the adoption of this Resolution.
- Frontier should contact SCE to discuss the viability of placing all facilities underground, with both utilities sharing the cost of underground placement along the length of highway 395 that is designated a state scenic highway and removing all jointly-owned utility poles along the stretch of highway 395 designated as scenic.
- If undergrounding placement construction along scenic highway 395 is in process prior to May 12, 2021, Frontier should submit a letter to the CD Director, informing the Director of the commencement, description, progress and forecasted completion date of the construction.
- If underground placement of telephone facilities along state scenic highway 395 has not commenced by May 12, 2021, Frontier should submit a Tier 3 advice letter no later than that date to justify the need to extend the Section 320 deviation.

Findings and Conclusions

1. Public Utilities (P.U.) Code Section (§) 320 was enacted in 1971.
2. Decision (D.) 80864 authorizes the California Public Utilities Commission to accept, review and approve Section 320 deviation requests by a Commission Resolution.
3. Verizon filed Tier 3 AL 12415 and 12415A on June 18, and September 18, 2009 respectively, notifying the Commission that in 2004 it had placed overhead fiber facilities along highway 395 without obtaining approval from the Commission and requested a retroactive deviation from Section 320 requirements for these facilities placements.
4. To address AL 12415 and 12415A, the Commission adopted Resolution T-17397, which conditionally approved, for a limited term of two years, Verizon's request for a Section 320 retroactive deviation subject to mitigation measures and payment of a \$5,000 fine.
5. In compliance with Ordering Paragraph (O.P.) 2 in Resolution T-17397, Verizon filed AL 12712 on July 1, 2015, requesting a permanent deviation.
6. On July 21, 2015, and July 28, 2015, Verizon filed supplemental ALs 12712A and 12712B, respectively.
7. Portions of Highway 395, including a segment from the junction of State Route 108 to north of Bridgeport, CA (mile markers 76.8 to 104.8) received scenic highway designation on June 5, 2000.
8. Three cable crossings at mile markers 80.6, 85.7 and 93.7 along scenic highway US 395—all within the stretch designated as scenic highway in June 2000—consist of fiber, and were placed by Verizon in 2004, after the year 2000 scenic highway designation.
9. Verizon placed five separate cables across highway 395 after its scenic highway designation in the year 2000, three of which exist within the stretch of highway designated as "scenic", without requesting a Section 320 deviation prior to placement.

10. In D.15-12-005, the Commission approved a joint application of Frontier California Inc. (Frontier) and Verizon for Frontier to acquire Verizon's wireline, broadband and video operations, and FiOS networks in California, and the transaction closed effective April 1, 2016.
11. Frontier received federal approvals of the acquisition from the Federal Communications Commission and the Department of Justice.
12. The pre-construction process for underground cable placement at these three locations may take more than a year due to permitting requirements, with construction likely taking one to two months, between May and October, due to terrain and weather considerations.
13. In addressing AL 12415, Verizon originally provided a cost estimate of \$41.40 per foot to place wires underground and an estimate of \$3.45 per foot to place wires overhead, a ratio of 12:1, with the total estimated cost of \$2.7 million.
14. In the February 1, 2016 data request response, Verizon revised its estimate to underground the 28-mile scenic highway 395 stretch to approximately \$5.7 million.
15. It is reasonable to grant Verizon a limited five-year retroactive deviation from the requirements of Section 320 and deny Verizon's request for a permanent deviation.
16. During the next five years, Frontier should investigate all underground placement options.
17. In response to Verizon's filing of ALs 12712, 12712A and 12712B, Communications Division received protests from Stephen Kalish and the California Broadband Cooperative as well comments from the California Department of Transportation (Caltrans).
18. Frontier should place both fiber and copper facilities crossing over scenic highway 395 underground at these three mile marker locations: (1) 80.6; (2) 85.7; and (3) at 93.7, within eighteen months of the adoption of this Resolution.
19. Frontier should contact SCE to initiate discussions to address the viability of placing all facilities underground, with both utilities sharing the cost of underground placement along the length of highway 395 that is designated a

state scenic highway and to remove all jointly-owned utility poles along the stretch of highway 395 designated as scenic.

20. If underground placement along scenic highway 395 is in process prior to May 12, 2021, Frontier should submit a letter to the CD Director, informing the Director of the commencement, description, progress and forecasted completion date of the construction.
21. If underground placement of telephone facilities along state scenic highway 395 has not commenced by May 12, 2021, Frontier should submit a Tier 3 AL no later than that date to justify the need to extend the Section 320 deviation.
22. On April 12, 2016, copies of this draft Resolution were sent to all parties on the service list and made available for public review and comment for a period of no more than 30 days prior to a May 12, 2016, vote by the Commission.
23. Communications Division received timely comments from Frontier and Mr. Stephen Kalish on May 2, 2016, and has addressed the comments herein, recommending adoption of this Resolution.

THEREFORE, IT IS ORDERED that:

1. Verizon California Inc.'s (U-1002-C) request for a permanent retroactive deviation from the requirements of Public Utilities Code Section 320 and Decision 80864, for the aerial fiber cable facilities constructed after the year 2000 along scenic Highway US 395 in Mono County, is denied and a conditional retroactive deviation is approved for a limited term of five years.
2. Within eighteen months of the adoption of this Resolution, Frontier California Inc., (U-1002-C) the successor company of Verizon California Inc., shall underground three copper and fiber cable crossings at mile markers 80.6, 85.7 and 93.7 along Scenic Highway US 395—all along the stretch which was designated as a scenic highway in June 2000—of which the fiber cable was placed by Verizon in 2004, after the year 2000 scenic highway designation.
3. On or before May 12, 2021, Frontier California Inc., the successor company of Verizon California, Inc. shall either; 1) commence the underground placement of its fiber and copper aerial facilities, that run along the length designated as scenic highway 395 between mile markers 76.8 and 104.8, by any available alternative, or 2) submit a subsequent Tier 3 advice letter to the Communications Division explaining why

underground placement has not commenced and detailing why it should be granted an extended deviation from the requirements of Public Utilities Code Section 320.

4. During the next five years, Frontier California Inc., the successor company of Verizon California Inc., shall contact Southern California Edison (SCE) to initiate discussions to address the feasibility of a joint plan to place all aerial facilities along this stretch of scenic highway underground, and shall submit a feasibility report addressing this issue to the Communications Division Director, within two years of this Resolution's adoption.

This Resolution is effective today.

I hereby certify that the Public Utilities Commission adopted this Resolution at its regular meeting on May 12, 2016. The following Commissioners adopted it:

TIMOTHY J. SULLIVAN
Executive Director